IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA, 1928

Crl.MC.No. 4121 of 2006()

SC.59/2003 of ASSISTANT SESSIONS COURT, THIRUVALLA
CRIME NO.272/01 OF THIRUVALLA POLICE STATION

.....

PETITIONER: 1ST ACCUSED:

JOY POULOSE, S/O.POULOSE,
POOKKANDATHIL HOUSE, KIZHAKKUM MURI,
KAVUMBHAGOM, THIRUVALLA.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P.PRADEEP

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SR.K.A. AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 4121 of 2006

- -

Dated this the 3rd day of January, 2007

O R D E R

Petitioner is accused No.1 in a prosecution, inter alia, under Sections 452, 324 and 308 I.P.C. Altogether there were 8 accused persons. The third respondent expired. The 1st respondent (petitioner herein) was not available for trial. Some of the co-accused approached this court and this court directed that the case against the petitioner be split up and the trial against the co-accused must proceed. Accordingly the co-accused were tried. They were found not guilty and acquitted. After their acquittal, the petitioner has now come to this Court with the prayer that proceedings against him may be quashed now in as much as there was no evidence at all adduced in the trial of the co-accused. He submits, though Annex.B judgment of acquittal does not clearly show that aspect, that the witnesses have stated that the petitioner herein is also not involved in the offence.

2. It is by now trite that the acquittal of the co-accused cannot ipso facto render any advantage or benefit to the absconding co-accused in his attempt to quash the proceedings against him, vide

Moosa v. **S.I. of Police** (2006 (1) K.L.T. 552). I do take note that the allegations are serious, including offences punishable under Sections 452, 324 and 308 I.P.C. It is admitted that the petitioner is named as a witness in the F.I. statement. The hostility of the witnesses for whatever reasons cannot obviously persuade a court to invoke its jurisdiction under Section 482 Cr.P.C. to quash the proceedings against the absconding co-accused. If the petitioner is named specifically in the F.I. statement, he cannot obviously attempt to avoid the liability to stand trial for the mere reason that the victims and/or the witnesses had turned hostile and the co-accused reaped the advantage of such hostility in the trial held against them. In these circumstances I am satisfied that this is a fit case where the petitioner must appear before the court concerned to face trial. It will be presumptuous on the part of this court to come to the conclusion that all witnesses shall turn hostile in the trial against the petitioner and the petitioner may be entitled to an acquittal after such trial.

3. The learned counsel for the petitioner submits that a warrant of arrest issued by the learned Asst. Sessions Judge is chasing the petitioner and that the petitioner may be permitted to surrender before the learned Judge and seek bail. I find no merit in the apprehension that the learned

Judge would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

3. This Crl.M.C. is accordingly dismissed, but subject to the above observations/directions. Needless to say that if the petitioner appears before the learned Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons. Again needless to say that the petitioner's right to claim discharge under Section 227 Cr.P.C. will not in any way be affected by the dismissal of this Crl.M.C.

(R. BASANT)
Judge

tm